



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

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NYS Department of Health
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Office of Professional Medical Conduct

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Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

March 10, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James V. Aquavella, M.D.
919 Westfall Road
Rochester, NY 14618-2633

RE: License No. 084662

Dear Dr. Aquavella:

Enclosed please find Order #BPMC 00-71 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **March 10, 2000**.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1258
Empire State Plaza
Albany, New York 12237

Sincerely,


Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Carmen P. Tarantino, Esq.
Brown & Tarantino, LLP
1500 Rand Building
14 Lafayette Square
Buffalo, NY 14203

Michael McTighe, Esq.

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X APPLICATION
IN THE MATTER : FOR
OF : CONSENT
JAMES V. AQUAVELLA, M.D. : AGREEMENT
AND ORDER
-----X
BPMC # 00-71

JAMES V. AQUAVELLA, M.D., the Respondent in this matter, being duly sworn, deposes and says:

1. I was authorized to practice medicine in New York State on or about September 26, 1960, by the issuance of license number 084662 by the New York State Education Department.

2. I am currently registered with the New York State Education Department, and have a registration address at 919 Westfall Road, Rochester, New York 14618-2633.

3. I understand that the New York State Board for Professional Medical Conduct ("the Board") has charged me with two (2) specifications of professional misconduct; a copy of the Statement of Charges is annexed hereto as Exhibit "A", and made a part hereof.

4. I hereby make application for a Consent Order to dispose of this matter, and to that end I agree: (i) not to contest the Second Specification set forth in Exhibit "A", to the extent that it is premised on Factual Allegations B and C; (ii) not to contest the Board's imposition of the penalty Censure and Reprimand provided this penalty is limited to the Second Specification and premised on Factual Allegations B and C; and (iii) to pay a fine in the amount \$5,000.00 within thirty (30) days of the effective date of the Board's Order disposing of this matter.

5. I specifically deny the First Specification set forth in Exhibit "A", and Factual Allegations A and D.

6. Imposition of the penalty Censure and Reprimand and payment of the \$5,000.00 fine shall constitute full satisfaction of the charges against me in this matter.

7. I hereby agree that failure by me to pay the \$5,000.00 fine within thirty (30) days of the effective date of the Board's Order shall constitute misconduct as defined by N.Y. Education Law Sec. 6530(29).

8. I further agree that in the event I am charged with professional misconduct in the future, this document together with Exhibit "A", and the Board's Order, shall be admitted into evidence at the administrative proceeding convened to determine those charges of misconduct.

9. I understand that in the event this Application is not granted by the Board nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, nor be used against me in any way, but shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding convened to determine this matter, and that such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

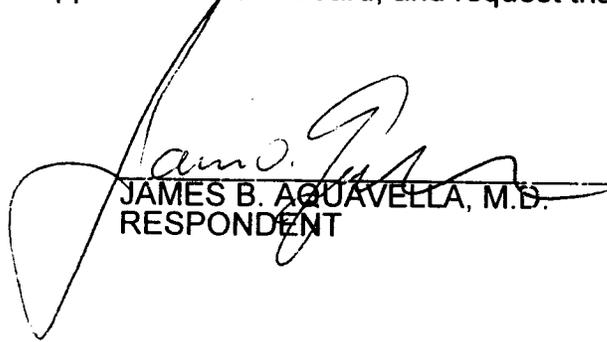
10. I agree that in the event the Board grants my Application, an Order of the Chairperson of the Board shall be effective upon issuance, which may be accomplished by mailing, by first class mail, a copy of the Order to me at the address set forth in this Application, to my attorney, or upon transmission by facsimile to me or to my attorney, whichever occurs earliest.

11. I hereby affirm that I am making this Application of my own free will and not under any duress, compulsion, or restraint of any kind, and that my decision to make this Application has been made after consultation with my attorney. In consideration of the relief this disposition affords me from the risks and burdens of participation in an

administrative proceeding to determine these charges, I knowingly and voluntarily waive any rights I might otherwise have administratively or judicially to contest or appeal this disposition of my case.

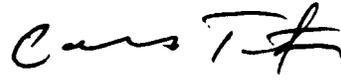
12. I now make this Application to the Board, and request that it be granted.

AFFIRMED:
Date:


JAMES B. AQUAVELLA, M.D.
RESPONDENT

The undersigned agree to the attached Application of the Respondent and to the proposed penalty based on the terms and conditions stated in the Application.

February
21, 2000
DATE: _____


CARMEN P. TARANTINO, ESQ.
Attorney for the Respondent

DATE: *Feb. 24, 2000.*


MICHAEL J. MCTIGHE
Senior Attorney
Bureau of Professional Medical Conduct

DATE: *Feb 29, 2000*


ANNE F. SAILE
Director
Office of Professional Medical Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER :
OF : CONSENT
JAMES V. AQUAVELLA, M.D. : ORDER

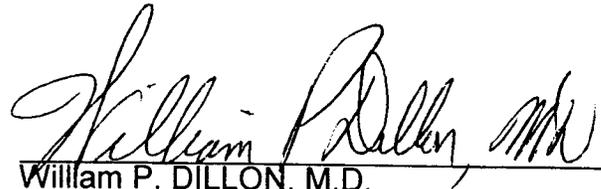
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Upon the proposed agreement of JAMES V. AQUAVELLA, M.D. (Respondent) for Consent Order, which Application is made a part hereof, it is agreed to and ORDERED, that the Application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in his Application, or to Respondent's attorney by certified mail, or upon transmission by facsimile to Respondent or to Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 3/5/00



William P. DILLON, M.D.
Chair
State Board for Professional Medical Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
IN THE MATTER : STATEMENT
OF : OF
JAMES V. AQUAVELLA, M.D. : CHARGES
-----X

JAMES V. AQUAVELLA, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 26, 1960, by the issuance of license number 084662 by the New York State Education Department. Respondent is currently registered with the New York State Education Department, and has a registration address at 919 Westfall Road, Rochester, New York 14618-2633.

FACTUAL ALLEGATIONS

- A. On or about November 18, 1996, Patient A (patients are identified in the Appendix) authorized the Respondent to perform eye surgery on him at Lattimore Community Surgicenter in Rochester, New York. The surgery on Patient A was performed at Lattimore Community Surgicenter on or about December 17, 1996, however, a surgeon other than Respondent performed the surgery.
- B. On or about March 26, 1997, Patient B authorized the Respondent to perform eye surgery on her at Lattimore Community Surgicenter in Rochester, New York. The surgery on Patient B was performed at Lattimore Community Surgicenter on or about April 15, 1997, however, a surgeon other than Respondent performed the surgery.

Exhibit "A"

C. On or about December 2, 1996, Patient C authorized the Respondent to perform eye surgery on her at Lattimore Community Surgicenter in Rochester, New York. The surgery on Patient C was performed at Lattimore Community Surgicenter on or about May 8, 1992, however, a surgeon other than Respondent performed the surgery.

D. On or about October 14, 1998, Patient D authorized the Respondent to perform eye surgery on him at Lattimore Community Surgicenter in Rochester, New York. The surgery on Patient D was performed at Lattimore Community Surgicenter on or about November 3, 1998, however, a surgeon other than Respondent completed the surgery on Patient D after Respondent left Lattimore Community Surgicenter.

FIRST SPECIFICATION

(Practicing The Profession Fraudulently)

Respondent is charged with professional misconduct as defined by N.Y. Education Law Sec. 6530(2) by practicing the profession of medicine fraudulently, as alleged in the facts of the following:

1. The facts set forth in Paragraph A, &/or B, &/or C, &/or D.

SECOND SPECIFICATION

(Performing Services Which The Patient Did Not Authorize)

Respondent is charged with professional misconduct as defined by N.Y. Education Law Sec. 6530(26) by performing or causing performance of professional services which had not been authorized by the patient, as alleged in the facts of the following:

1. The facts set forth in Paragraphs A , &/or B, &/or C, &/or D.

February 24
DATED: ~~January~~, 2000
Albany, NY

Peter D. Van Buren

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct